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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,182	01/28/2004	Shinji Kajita	2004_0120A	9850
513 7590 09/26/2007 WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021			EXAMINER HECKERT, JASON MARK	
		ART UNIT 1746	PAPER NUMBER	
			MAIL DATE 09/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/765,182	KAJITA ET AL.
Examiner	Art Unit	
Jason Heckert	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 July 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 and 8-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 8-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Because of the applicant's amendment to the claims, the previous rejections under 35 USC 102(b) have been rendered moot.
2. The applicant has amended the claims to include limitations drawn to a reverse side nozzle. Although the examiner understands the differences between applicant's figure 2 and Tomita's figure 1, the examiner does not find that the claim language properly defines the applicant's structure. Tomita shows a reverse side nozzle 16 that sprays fluid onto a substrate holder. The dashed line shows a horizontal component to the movement of said fluid emitting from nozzle 16. Applicant fails to present the structure, such as location and orientation, of said nozzle that differentiates it from the prior art and instead relies on intended use. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, and 8 rejected under 35 U.S.C. 102(b) as being anticipated by Tomita et al. Tomita teaches a substrate washing device and a method for washing substrates. The device of Tomita comprises a rotatable substrate holder 12, a chamber surrounding the substrates (reads on “a scattering prevention cup”, as claimed), and rinsing nozzles 15 and 16. Tomita shows that nozzle 16, on the reverse side of the holder, sprays fluid onto the substrate holder. The dashed line shows a horizontal component to the movement of said fluid emitting from nozzle 16. The cleaned surface of the holder is upwards in relation to the nozzle 16. Thus, Tomita presents the structure of the applicant’s claimed invention. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988). In regards to claim 8, fluid is also ejected laterally from nozzle 15 to clean the chamber simultaneously (Fig 1: col. 3, lines 8-10, col. 5, lines 8-49).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Tomita in view of Masui. Tomita does not teach a movable cup. Movable cups are known in the art. Masui teaches a substrate cleaning apparatus comprising a rotatable holder, a cleaning cup 6, and a cup cleaner 15. The cup 6, constituting as a cleaning chamber, is movable upwardly and downwardly by mechanism 16 so that it may be easily cleaned. It would have been obvious at the time of the invention to modify Tomita and include a movable cup or chamber, as taught by Masui, so that it may be easily cleaned.

7. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Tomita in view of Hashimoto et al. (US Patent 5,945,161) or Costigan et al. (US Patent 6,090,534). Tomita does not disclose a reverse side nozzle capable of delivering fluid to the rear surface of the substrate. Such nozzles are known in the art. Hashimoto discloses rear surface nozzles 145 and Costigan discloses backside rinse nozzles 355. Both are used to wash or rinse the rear surface of the substrate. Thus, it would have been obvious at the time of the invention to modify Tomita, and include rear surface nozzles, as disclosed by Hashimoto and Costigan, in order to wash and rinse the rear surface of the substrate.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomita in view of Hashimoto et al. (or Costigan et al.) and further in view of Masui. Tomita discloses various nozzles 4, 7, 9 that are located above the holder.

Furthermore, nozzle 9 is located laterally outward of the holder. Tomita does not disclose a nozzle located on the cup. Masui discloses nozzle 5 that is located on a cup

6. Thus, this arrangement and location of a nozzle is known. It would have been obvious at the time of the invention to modify Tomita in view of Hashimoto, as stated above, and further include a nozzle on a cleaning cup, as disclosed by Masui, in order to deliver fluids to the substrate.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tomita in view of Tanaka et al (US Patent 5,823,130). Tomita discloses multiple nozzles above the holder, but does not disclose them as being above an individual cup. This arrangement is well known in the art. Tanaka et al. discloses nozzles 23 and 31 that are located above the holder and cup. It would have been obvious at the time of the invention to modify Tomita and include nozzles above an individual cup, as disclosed by Tanaka, in order to deliver fluids to the surface of the substrate.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Heckert whose telephone number is (571) 272-2702. The examiner can normally be reached on Mon. to Friday, 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMH



MICHAEL BARR  
SUPERVISORY PATENT EXAMINER